Malayan Banking Bhd v Dr Betharajoo a/l Krishnasamy

HIGH COURT (IPOH) — CIVIL APPEAL NO 12–105 OF 1997
CLEMENT SKINNER JC
10 FEBRUARY 2000

Evidence *— Exhibit — Admissibility of — Documents introduced during trial and marked as exhibits — Failure of opposing counsel to object immediately and demand strict proof of documents — Documents formed part of disagreed bundle — Objection at submission stage to mode by which documents were being proved — Whether imperative for maker of documents to be called to tender them in evidence — Whether exhibits were hearsay evidence and inadmissible*

The appellant granted a loan to the borrower which the respondent guaranteed. The borrower defaulted in repayment of the loan as a result of which the appellant commenced proceedings against the respondent. A letter of demand dated 17 December 1987 and an AR card were included in the disputed bundle of documents. At the trial, the letter of demand and the AR card were admitted in evidence and marked as exhibits P7 and P8 respectively. During submission, the respondent contended that P7 and P8 were inadmissible in evidence. The sessions court judge ruled that although both P7 and P8 had been admitted in evidence and marked as exhibits, they were inadmissible and accordingly rejected them. The appellant appealed. The appellant contended that when P7 and P8 were sought to be introduced in evidence and the court was asked to mark them as exhibits, the respondent should have but did not object to their being so marked and having failed to do so, could not object to their admissibility at the submission stage of the hearing. It was further submitted that once a document was marked as an exhibit, its contents became admitted in evidence for the purpose of the trial and accordingly P7 and P8 should not have been rejected but instead considered by the sessions court judge in arriving at her decision. The respondent argued that as the two documents formed part of the 'disagreed bundle', it was imperative that the maker of the documents be called to tender them in evidence. It was submitted that the appellant had tendered the documents through a witness who had no knowledge of their contents and that tantamount to tendering hearsay evidence and where hearsay evidence was sought to be introduced, it matters not that no objection was taken or that the documents had become marked as exhibits — hearsay evidence remained inadmissible.

Held, allowing the appeal:

(1) The court found that when the respondent objected to the 'admissibility' of P7 and P8, he was really objecting to the mode by which these two documents were being proven. Since it was the mode of proving these two documents that the respondent was objecting to, the objection should have been taken at the trial

before the documents were marked and admitted in evidence (see pp 397F–G, 398D–E).

(2) A party seeking to rely on a document which is placed in a disputed bundle is not precluded or prevented from trying to have that document admitted in evidence and marked as exhibit without having to formally prove it. And if such attempt is made, as it was in this case, it is incumbent on an opposing counsel to remain vigilant and object to it immediately so that the party trying to introduce the document is put to strict proof of it. But if opposing counsel is content to remain silent and allow the document to come in without being formally proved, then it would be too late to take objection at the submission stage of the trial because by then it would be beyond the power of counsel relying on that document to formally prove it. The sessions court judge misdirected herself in law when she allowed the respondent to object to the admissibility of P7 and P8 at the submission stage and in subsequently rejecting them (see p 399E–H).

(3) What has resulted from the failure of the respondent to object to P7 and P8 being marked as exhibits was that they had become admitted in evidence without formal proof of their existence or authenticity having to be established and to that extent P7 and P8 had become like any other document, placed without any conditions attaching thereto in an agreed bundle. The questions concerning the weight to be given to the documents and whether their contents stand proven were matters to be decided by the trial court (see p 400A, G).

[Bahasa Malaysia summary

Perayu telah memberikan suatu pinjaman kepada peminjam di mana responden menjamin. Peminjam telah ingkar di dalam membayar balik pinjaman di mana ia mengakibatkan perayu memulakan prosiding-prosiding terhadap responden. Suatu surat tuntutan bertarikh 17 Disember 1987 dan suatu kad AR telah dimasukkan di dalam ikatan dokumen-dokumen yang dipertikaikan. Semasa perbicaraan, surat tuntutan dan kad AR tersebut telah diterima sebagai keterangan dan ditandakan sebagai ekshibit P7 dan P8 masing-masing. Semasa hujahan, responden telah menegaskan bahawa P7 dan P8 tidak boleh diterima sebagai keterangan. Hakim mahkamah sesyen telah memutuskan bahawa walaupun kedua-dua P7 dan P8 telah diterima sebagai keterangan dan ditandakan sebagai ekshibit-ekshbit, ia tidak boleh diterima dan dengan itu menolaknya. Perayu telah merayu. Perayu menegaskan bahawa apabila P7 dan P8 telah dipohon untuk dikemukakan di dalam keterangan dan mahkamah diminta untuk menandakannya sebagai ekshibit-ekshibit, responden sepatutnya tetapi hakikatnya telah tidak membantah kebolehterimaannya di peringkat hujahan semasa perbicaraan. Adalah dihujahkan selanjutnya bahawa selepas suatu dokumen ditandakan

A sebagai ekshibit, kandungan-kandungannya diterima di dalam keterangan bagi tujuan perbicaraan dan dengan itu P7 dan P8 tidak patut ditolak tetapi sebaliknya harus dipertimbangkan oleh hakim mahkamah sesyen di dalam mencapai keputusannya. Responden telah berhujah bahawa oleh kerana kedua-dua dokumen membentuk sebahagian 'ikatan yang tidak dipersetujui', ia adalah suatu kemestian B bahawa pembuat dokumen-dokumen tersebut dipanggil untuk mengemukakannya di dalam keterangan. Adalah dihujahkan bahawa perayu telah mengemukakan dokumen-dokumen tersebut melalui seorang saksi yang tidak mempunyai pengetahuan mengenai kandungan-kandungannya dan ia terjumlah kepada mengemukakan C keterangan dengar cakap dan di mana keterangan dengar cakap telah dipohon untuk dikemukakan, adalah tidak berkaitan langsung sama ada bantahan telah dibuat atau bahawa dokumen-dokumen telah ditandakan sebagai ekshibit-ekshibit — keterangan dengar cakap kekal tidak boleh diterima.

D **Diputuskan,** membenarkan rayuan tersebut:

(1) Mahkamah mendapati bahawa apabila responden membantah 'kebolehterimaan' P7 dan P8, beliau sebenarnya membantah terhadap cara di mana dua dokumen ini telah dibuktikan. Oleh kerana responden telah membantah cara pembuktian dua E dokumen ini, bantahan tersebut sepatutnya diterima semasa perbicaraan sebelum dokumen-dokumen ditandakan dan diterima sebagai keterangan (lihat ms 397F–G, 398D–E).

(2) Suatu pihak yang memohon untuk bergantung kepada suatu dokumen yang telah diletakkan di dalam ikatan yang dipertikaikan tidak dikecualikan atau dihalang daripada mencuba F untuk mendapatkan dokumen tersebut diterima sebagai keterangan dan ditandakan sebagai ekshibit tanpa perlu membuktikannya secara rasmi. Dan jika cubaan sedemikian dibuat, seperti apa yang berlaku dalam kes ini, adalah wajib di pihak peguam lawan untuk kekal berjaga-jaga dan membantah terhadapnya dengan terus agar pihak yang cuba mengemukakan G dokumen tersebut terpaksa membuktikannya secara ketat. Tetapi jika peguam pihak lawan berpuas hati untuk kekal berdiam diri dan membenarkan dokumen dimasukkan tanpa perlu membuktikannya secara rasmi, maka adalah terlalu lewat untuk menerima bantahan tersebut di peringkat hujahan perbicaraan tersebut H kerana menjelang masa itu adalah melampaui kuasa peguam yang bergantung kepada dokumen tesebut untuk membuktikannya secara rasmi. Hakim mahkamah sesyen telah tersalah arah dirinya dari segi undang-undang apabila beliau membenarkan responden untuk membantah kebolehterimaan P7 dan P8 di peringkat hujahan dan kemudian menolaknya (lihat ms 399E–H).

I (3) Apa yang diakibatkan daripada kegagalan responden untuk membantah P7 dan P8 ditandakan sebagai ekshibit-ekshibit adalah bahawa ia telah diterima sebagai keterangan tanpa bukti

rasmi mengenai kewujudannya atau kesahannya dibuktikan dan setakat itu P7 dan P8 telah menjadi seperti dokumen-dokumen yang lain, yang telah diletakkan tanpa sebarang syarat-syarat yang dikenakan di dalam suatu ikatan yang dipersetujui. Persoalan-persoalan berkaitan dengan pertimbangan yang diberikan kepada dokumen-dokumen dan sama ada kandungan-kandungannya telah dibuktikan adalah diputuskan oleh mahkamah perbicaraan (lihat ms 400A, G).]

Notes

For cases on exhibits generally, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 1099–1127.

Cases referred to

Boonsom Boonyanit v Adorna Properties Sdn Bhd [1997] 2 MLJ 62 (refd)

Chong Khee Sang v Pang Ah Chee [1984] 1 MLJ 377 (refd)

Gopal Das & Anor v Sri Thakurji & Ors AIR 1943 PC 83 (refd)

Jaafar Shaari & Siti Jama Hashim v Tan Lip Eng & Anor [1997] 4 MLJ 693 (refd)

Malaysia National Insurance Sdn Bhd v Malaysia Rubber Development Corp [1986] 2 MLJ 124 (refd)

Appeal from: Summons No 62–221 of 1998 (Sessions Court No 1, Ipoh)

Chong Kok Keun (*Ngan & Tan & Partners*) for the appellant.
Kerpal Singh (*Bachan & Kartar*) for the respondent.

Clement Skinner JC: This is an appeal against the decision of the learned sessions court judge, who on 17 October 1997 dismissed the plaintiff's ('the appellant') claim against the defendant ('the respondent') after a full trial. The facts giving rise to the claim may be shortly stated.

The appellant granted a loan of RM30,000 to one Supramaniam s/o Veerasamy ('the borrower') which the respondent guaranteed by deed dated 8 June 1979. One of the conditions stated in the guarantee was that the respondent would repay on demand all the advances and loans made by the appellant to the borrower.

In the events that transpired, the borrower defaulted in repayment of the loan as a result of which the appellant commenced proceedings against the respondent on the guarantee. In bringing its claim, the appellant pleaded, inter alia, that by a letter dated 17 December 1987, its solicitors had made a demand on the respondent for the repayment of the sum of RM44.664.02 but the respondent had failed to pay the same. The respondent raised several defences to the appellant's claim but only one defence engages our attention in this appeal. The respondent pleaded that he had not received any prior demand for payment from the appellant as

A required by the terms of the guarantee; as such, no liability to pay had arisen.

In preparing for trial, the parties prepared and submitted bundles of agreed and disputed documents. Included in the disputed bundle were two document: the letter of demand dated 17 December 1987 allegedly sent to
B the respondent by the appellant's solicitors by AR post; and an AR card which allegedly bore thereon the signature of the respondent acknowledging receipt of the letter of demand.

The parties also, pursuant to directions of the court, agreed on issues to be tried. Out of four issues agreed upon, two only need to be mentioned here. The court was asked to determine whether proper demand had been
C made by the plaintiff against the defendant for the repayment of the debts and whether the letter of guarantee is enforceable against the defendant.

At the trial, the appellant called as a witness one Noh bin Idris (SP2). He was an officer of the bank in charge of doubtful loan collection. Whilst giving his evidence in chief, SP2 stated that when the borrower defaulted in
D his loan, the appellant went against the respondent as guarantor. This is what SP2 stated:

> Apabila peminjam gagal membuat bayaran, kita terus pergi ke penjamin. Kita juga ada hantar surat kepada penjamin melalui peguam kami.

E SP2 was then referred to the letter of demand (which formed pp 3 and 4 of Bundle A) and he stated: 'Ini adalah surat peguam kami tersebut'. Counsel for the appellant then asked the court to mark the letter of demand as an exhibit. Counsel for the respondent did not object thereto and the learned sessions court judge marked the document as 'P7'. SP2 was similarly referred to the AR Card (which formed p 5 of Bundle A) and he said: 'Ini
F adalah kad AR yang telah dikembalikan setelah ditandatangani oleh penjamin'. Counsel for the appellant then asked the court to mark the AR Card as an exhibit; counsel for the respondent did not object thereto and the document was duly marked 'P8' by the learned sessions court judge.

G At the close of the appellant's case, counsel for the respondent informed the court that the defence was electing to submit that there was no case for the respondent to answer and no evidence would be called by the defence if that submission failed. During those submissions, counsel for the respondent contended, inter alia, that P7 and P8 were inadmissible in evidence and without those two exhibits the appellant was unable to prove
H service of the letter of demand on the respondent. At the conclusion of submissions, the learned sessions court judge ruled that although both P7 and P8 had been admitted in evidence and marked as exhibits, they were inadmissible and accordingly rejected them.

In coming to her decision, the learned sessions court judge whilst accepting the principle stated in the case of *Boonsom Boonyanit v Adorna*
I *Properties Sdn Bhd* [1997] 2 MLJ 62, that a party objecting to the admissibility of a document should do so at the trial stage and not at the appellate stage, went on to say that as no judgment had yet been

pronounced by her in this case, it was still open to counsel for the respondent to raise objections to the admissibility of P7 and P8 at the submission stage. A

Having rejected P7 and P8, the learned sessions court judge went on to find that the appellant had not proved that a proper demand had been made on the respondant in accordance with the terms of the guarantee and so dismissed the appellant's claim. B

In arguing this appeal, counsel for the appellant contended that when the letter of demand (P7) and the AR Card (P8) were sought to be introduced in evidence and the court was asked to mark them as exhibits, counsel for the respondent should have but did not object to their being so marked and having failed to do so, could not object to their admissibility at the submission stage of a hearing. counsel for the appellant further submitted that once a document is marked as an exhibit, its contents becomes admitted in evidence for the purpose of the trial and accordingly P7 and P8 should not have been rejected but instead considered by the learned sessions court judge in arriving at her decision. C D

In responding to this appeal, counsel for the respondent adopted a two pronged approach. He first repeated the submissions made in the court below, namely, that as the two documents formed part of the 'disagreed bundle' it was imperative that the maker of the documents be called to tender them in evidence; to tender the documents through a witness who has no knowledge of their contents is tantamount to tendering hearsay evidence and where hearsay evidence is sought to be introduced, it matters not that no objection is taken or that the documents have become marked as exhibits, hearsay evidence remains inadmissible. In support, counsel for the respondent relied on the case of *Malaysia National Insurance Sdn Bhd v Malaysia Rubber Development Corp* [1986] 2 MLJ 124. E F

As a fall back position, counsel for the respondent argued that the fact that the two documents got marked, without objection as exhibits, did not mean that they had become documents 'agreed and admitted for all purposes'. At best P7 and P8 had acquired the status of documents included in an agreed bundle where the truth of the contents of such documents would still have to be proved. In support, counsel cited the following passage of the judgment of Shankar J (as he then was) in the case of *Chong Khee Sang v Pang Ah Chee* [1984] 1 MLJ 377 at p 382: G

> ... once a document is included in an agreed bundle, it is no longer necessary to prove their existence or execution. Nor is it necessary to produce the original. But so far as the contents of the documents are concerned the truth of the same has still to be proved in the absence of any specific admission of the facts therein contained. H

In deciding this appeal, it is essential to first identify what the true nature of the objection taken against P7 and P8 in the sessions court was. No doubt, in taking the objection, counsel for the respondent had described these two documents as inadmissible but the question is, what was it that counsel objected to about these documents? Was counsel objecting to the fact that P7 and P8 were in themselves inadmissible, as for example they were I

declared inadmissible by a statute; or was counsel objecting to the mode of proving these two documents, ie that the mode of proof put forward was irregular or insufficient in that they were being tendered in evidence by someone other than their maker. The question asked is not unimportant because depending on what the objection to these documents were, the law governing a party's right to object thereto and when the objection should be taken differs in each situation.

The position is very clearly put by the Court of Appeal in the case of *Boonsom Boonyanit v Adorna Properties Sdn Bhd* where at p 72, his Lordship Gopal Sri Ram JCA speaking for the court said:

> The law of evidence draws a distinction between the admissibility of a document and the mode of proving it. If a document is declared inadmissible by a statute, then, failure to object to the inadmissible document at the first available opportunity does not prevent the party adversely affected from raising the matter on appeal. Inadmissible evidence, whether in civil or criminal proceedings, remains inadmissible despite any failure to object to its admission (see *Malaysia National Insurance Sdn Bhd v Malaysia Rubber Development Corp* [1986] 2 MLJ 124).

His Lordship in the same judgment also made reference to the Privy Council decision in *Gopal Das & Anor v Sri Thakurji & Ors* AIR 1943 PC 83 and I think it would be instructive to set out here what Sir George Rankin said on this subject in delivering the advice of the Board. At p 87 he said:

> Where the objection to be taken is not that the document is in itself inadmissible but that the made of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of Appeal and then complain for the first time of the mode of proof. A strictly formal proof might or might not have been forthcoming had it been insisted on at the trial.

Reverting to the facts of our appeal, having gone through the notes of proceedings, the submissions of counsel here and in the court below as well as the judgment of the learned sessions court judge, I am not in any doubt that when counsel for the respondent objected to the 'admissibility' of P7 and P8, he was really objecting to the mode by which these two documents were being proved and I say so for the following reasons: firstly, counsel for the respondent expressly mentioned in his submissions in the court below that the plaintiff needed to prove the documents strictly by calling their maker. This is evident from p 26 of the record of appeal, where counsel for the respondent submitted that 'none of the documents were agreed documents therefore it is incumbent on the plaintiff to prove them strictly'. Also, on the same page of the record of appeal, when referring to P7 and P8, counsel for the respondent said this: 'P7 and P8. Purported notice sent by the Bank's solicitors. Someone from the firm should have been called to prove the service of the notice because of the specific denial by the defendant'. And finally, counsel for the respondent is recorded as saying with regard to the exhibits produced, 'P3–P8 — maker not called'.

Secondly, on the basis of the submissions made to her, the learned sessions court judge was herself not in any doubt that the objection to these two documents was as to their mode of proof because at p 3 of her judgment, the learned sessions court judge found with regard to P7 that, 'P7 was not an agreed document and therefore the maker had to be called to tender it'. With regard to P8, the learned sessions court judge held that 'no witness [I think she meant maker] had also been called to tender the AR Card (P8) and therefore there is no proof that P7 was in fact posted to the defendant ...' By making reference to the fact that the maker of both P7 and P8 should have been called to tender them, the learned sessions court judge was no doubt referring to the mode by which they should have been proved and not to the fact that these two documents were in themselves inadmissible.

Thirdly, when counsel for the respondent submitted in the court below that hearsay evidence remains inadmissible, I do not think he was saying that P7 and P8 were in themselves inadmissible, because they were not; they could have been formally proved and tendered in evidence by calling their maker. What counsel was objecting to as hearsay was the evidence of SP2 given about the contents of P7 and P8, when he (SP2) was not the maker of these documents, which is a matter quite different from saying P7 and P8 were inadmissible in evidence.

Since it was the mode of proving these two documents that counsel for the respondent was objecting to, the cases of *Boonsom Boonyanit* and *Gopal Das & Anor* show that objection should have been taken at the trial before the documents were marked and admitted in evidence. But the question is, in not having done so, was it too late for counsel for the respondent to raise objection to them at the stage of submissions? That the respondent is precluded from so doing, has been answered in the case of *Boonsom Boonyanit* . In that case, when the matter came on for trial, as the parties had not or could not agree to an agreed bundle of documents, the trial judge directed that as the case proceeded, the parties could object to the admission of any document as and when they were tendered. During the course of the trial the plaintiff tendered documents in evidence which the defendant did not object to when they were being produced. However, after the close of evidence and at the submission stage, the defendant selected which documents they would object to but this was disallowed by the learned trial judge. On appeal, the direction of the learned trial judge vis a vis the proof of documentary evidence was the subject of a cross appeal brought by the defendant, but the Court of Appeal held that the learned trial judge was correct in what he did and that it was not open to the defendant to remain silent when documents were being produced and only take objection in final argument. This is what Gopal Sri Ram JCA in delivering the judgment of the court stated at p 72:

> In our judgment, the direction given by the learned judge and his conduct of the case vis a vis the proof of documentary evidence was entirely proper. He did the best that he could in the circumstances in which he had been placed by the parties' failure to agree upon the proof of the documents tendered by the appellant. In view of his direction, *it was certainly not open for the respondent*

> *to remain silent at the moment of production and take the objection in final argument.* (Emphasis added.)

I should also point out that a similar view is expressed in *Sarkar's Law of Evidence* (15th Ed). This is what is stated at p 1075 of *Sarkar*:

> Once a document is properly admitted the contents would stand admitted in evidence and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence such a document, *no such objection could be allowed to be raised at any later stage of the case or in appeal.* (Emphasis added.)

The rationale in not allowing an objection to be taken at a later stage of the trial to the mode of proving a document when no objection had been taken at the time when the document was being introduced in evidence is that if objection had been taken at the appropriate time, the party seeking to introduce the document might or might not have called formal proof to put in the document. This is made clear from the last sentence of the speech of Sir George Rankin in the case of *Gopal Das & Anor v Sri Thakurji & Ors* which was quoted earlier.

I do appreciate that in *Boonsom Boonyanit*, Gopal Sri Ram JCA was speaking of a situation where the parties could not agree on a bundle of documents whereas in our case, the parties had. But I do not think that fact would make what is stated in *Boonsom Boonyanit*'s case any less applicable here. To me, documents are placed in an agreed or disputed bundle as part of pre-trial preparations and serve primarily to speed up the trial process as the parties and the court know what documents will need strict formal proof and which do not. However, it is my view that a party seeking to rely on a document which is placed in a disputed bundle is not precluded or prevented from trying to have that document admitted in evidence and marked as an exhibit without having to formally prove it. And if such an attempt is made, as it was in this case, it is incumbent on opposing counsel to remain vigilant and object to it immediately so that the party trying to introduce the document is put to strict proof of it; but if opposing counsel is content to remain silent and allow the document to come in without being formally proved, then it would be too late to take objection at the submission stage of the trial because by then it would be beyond the power of counsel relying on that document to formally prove it. I wish to make it clear that what I have said regarding an attempt to have a document found in a disputed bundle being admitted to the record without being to formally prove it only refers to the mode of proving that document and not to the admissibility of the same.

To conclude, it is my finding that the learned sessions court judge misdirected herself in law when she allowed counsel for the respondent to object to the admissibility of P7 and P8 at the submission stage and in subsequently rejecting them. Having arrived at the above finding, I next need to decide on the appropriate order I should make in this appeal because whilst the admission of P7 and P8 in evidence should not have been a matter open to objection, what weight is to be placed on P7 and P8 and whether the truth of their contents have been sufficiently established are questions that still need to be decided on. It is the submission of counsel for

the respondent, and I agree with that submission, that what has resulted from the failure of counsel for the respondent to object to P7 and P8 being marked as exhibits is that they have become admitted in evidence without formal proof of their existence or authenticity having to be established and to that extent P7 and P8 have become like any other document, placed without any conditions attaching thereto, in an agreed bundle. In so far as the evidential value of such a document is concerned, and the matters a court would direct its mind to in considering that question, I would refer to the decision in the case of *Jaafar Shaari & Siti Jama Hashim v Tan Lip Eng & Anor* [1997] 3 MLJ 693, where in discussing the evidential value of a document that has become admitted in evidence because it has been included in an agreed bundle without any condition being placed on their inclusion in such bundle, this is what Peh Swee Chin FCJ said at pp 706–707:

> First and foremost, the agreed bundle of documents means that the documents therein are authentic and they do exist, therefore they require no proof of their authenticity by calling eg their makers.
>
> Secondly, the truth of contents of any of the documents in the agreed bundle of documents is always not admitted unless the contrary is indicated directly or indirectly and such truth of such contents is liable to be challenged in court at the instance of either of the parties.
>
> Thirdly, such documents therein do not form automatically a part of the evidence of the case in question ipso facto, but any of such documents does become part of such evidence if it is read or referred to by either of the parties, wholly or partly, at length or in a briefest of mention, either in examination of any witness, in submission at any stage or even on any unilateral drawing of court's attention to it by either of the parties at any time before the conclusion of the case.
>
> Fourthly, at the end of the whole case, the truth of the contents of any of the document is up to the court to determine, regard being had, inter alia, to any absence of challenge by either of the parties on any part of the document and similarly, the question of weight, eg either great or no weight to be given to any part of any document is also a matter for the trial court, which considers the document including any 'written hearsay' contained therein. The court may refuse to give any weight at all to any document, but then it is accountable like in other matters, to the parties and to the appellate court for reasons for such refusal.

The above questions concerning the weight to be given to a document and whether their contents stand proved are matters to be decided by the trial court and until they have been addressed by the learned sessions court judge are not appropriate to be dealt with by me. In the result, I allow this appeal with costs. The order made by the learned sessions court judge is set aside and this case is remitted back to the sessions court for the learned sessions court judge to decide on the matters already adverted to.

Appeal allowed.

Reported by Jafisah Jaafar